

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07HD-147

Hawaii

Final Approval of the Acquisition of County Lands and Set
Aside to the Department of Education for Addition to the
Existing Naalehu School Campus, Kaunamano, Kau, Hawaii, Tax
Map Key:(3) 9-5-09:15.

APPLICANT AGENCY:

State of Hawaii, Department of Education

LANDOWNER:

County of Hawaii

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as
amended, and Act 154, Session Laws of Hawaii 2003.

LOCATION:

County-owned lands situated at Kaunamano, Kau, Island of Hawaii,
identified by Tax Map Key: (3) 9-5-09:15, as shown on the
attached map labeled Exhibit A.

AREA:

2.27 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10; Residential

CURRENT USE:

Subject site is improved with a gymnasium and other ancillary
structures to support the ongoing school on adjacent State land.

CONSIDERATION:

None. County shall dedicate the subject lands gratis.

PURPOSE:

Addition to the existing school campus.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board involves a dedication of land that does not require the use of State funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as Chapter 343 environmental requirements apply to Applicant's use of the lands, Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

At its meeting of November 16, 2007, under agenda item D-4, the Board of Land and Natural Resources (BLNR) granted an approval in principle to acquire approximately 2.27 acres of land from the County of Hawaii. Subject site is located at Kaunamano, Kau, Island of Hawaii, and is further identified as TMK (3) 9-5-09:15, attached as Exhibit A.

The subject County-owned site is adjacent to existing State land, both of which have been under the control of the Department of Education ("DOE") for over the past 50 years. The proposed conveyance of the subject site will allow DOE to consolidate the two parcels and construct a new classroom building at a location DOE considers to be the most efficient.

Pursuant to the aforementioned BLNR approval in principle, DOE was required to:

- 1) Provide survey maps and descriptions for the property according to State DAGS standards and at Applicant's own cost; and
- 2) Obtain a title report for the property at Applicant's own cost and subject to review and approval by the Department.

Whereas the subject site was purportedly used for grazing purposes prior to DOE's exclusive use, BLNR did not require a Phase I Environmental Site Assessment to be completed for this conveyance. However, BLNR's approval in principle required staff to report due diligence results and recommendations to the Board for final approval prior to documentation. Accordingly, summarized below are the due diligence results.

- 1) Survey map and description of the 2.27 acre County-owned parcel was submitted to the Department of Accounting and

General Services, Survey Division (DAGS-Survey) for review. Based on the provided documentation, DAGS-Survey prepared and approved an appropriate property description and map. The DAGS-Survey property description and map shall be used as an exhibit to the final conveyance document.

- 2) A title report dated March 24, 2008 was prepared by Title Guaranty of Hawaii, Incorporated. Review of the title report revealed a previously imposed use restriction and reversionary provision. Whereas this restriction prohibited construction of classrooms on the subject site, a Release of Deed Restriction was executed and recorded with the Bureau of Conveyances on August 21, 2008. An updated title report, dated September 22, 2008, confirms said use restriction has been properly removed as an encumbrance. There are no other apparent encumbrances or easements of record that adversely affect the subject site.

Subject to BLNR and AG approval and provided DOE acquires title insurance, the County of Hawaii has agreed to convey the subject site via the State's standard warranty deed form as amended and attached as Exhibit B. DOE has agreed to pay for an owner's title insurance policy for an insured amount of not less than the County assessed land value of the site.

Following the proposed transfer, the land will be set aside to DOE for management. Should management of these lands revert to DLNR in the future, DOE agrees to pay for a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to, and to the satisfaction of the Department.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
 - A. The terms and conditions of the attached Warranty Deed document form;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


2. Authorize the issuance of a management right-of-entry permit to the Department of Education covering the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Education under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances (./, *except as noted herein.)

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, (*except as noted herein,) and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

~~The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.~~

~~For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation~~

~~and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.~~

~~AND, Grantor shall conduct a Phase I environmental site assessment no later than thirty days before the effective date of this deed, and then conduct any and all abatement and disposal, as warranted by that Phase I environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion.~~ _____

IN WITNESS WHEREOF, _____,
the Grantor herein, has caused these presents to be executed this
_____ day of _____, 20____, and the STATE OF
HAWAII, by its Board of Land and Natural Resources, the Grantee
herein, has caused the seal of the Department of Land and Natural
Resources to be hereunto affixed and these presents to be
executed this _____ day of _____, 20____, both effective
as of the day, month, and year first above written.

(NAME OF GRANTOR)

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
_____.

By _____
Its

And By _____
Its

GRANTOR

APPROVED AS TO LEGALITY
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Deputy Attorney General

Dated: _____

By _____
Chairperson
Board of Land and
Natural Resources

GRANTEE

*Include only if there are encumbrances